



VIRGINIA  
REGULATORY TOWN HALL



Search the To

## Sign in Proposed Text

### Action:

Establishment of new Resource Management Plan Regulations ...

Stage: Proposed

7/10/12 11:33 PM [latest]

4VAC50-70

CHAPTER 70

RESOURCE MANAGEMENT PLANS

4VAC50-70-10

4VAC50-70-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Assessment" means an onsite review of a management unit.

"Best management practice" or "BMP" means structural and nonstructural practices that manage soil loss, nutrient losses, or other pollutant sources to minimize pollution of water resources and improve water quality.

"Board" means the Virginia Soil and Water Conservation Board.

"Corrective action agreement" means a written agreement that guides the owner or operator in the steps needed and the specific remedies required to return to compliance with the minimum standards of a resource management plan.

"Department" means the Department of Conservation and Recreation.

"Management unit" means one or more agricultural fields or United States Department of Agriculture Farm Service Agency tracts under the control of the owner or operator and identified as the appropriate unit for RMP implementation. The management unit may consist of multiple fields and tracts or an entire agricultural operation.

"NRCS" means the United States Department of Agriculture Natural Resources Conservation Service.

"Operator" means a person who exercises managerial control over the management unit.

"Owner" means a person who owns land included in a management unit.

"Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, any interstate body, or any other legal entity.

"Resource management plan" or "RMP" means a plan developed and implemented pursuant to the standards established by this chapter.

"Review authority" means a soil and water conservation district or the department where no soil and water conservation district exists that is authorized under this chapter to determine the adequacy of a resource management plan and perform other duties specified by this chapter.

"RMP developer" means an individual who meets the qualifications established by this chapter to prepare or revise a resource management plan.

"Soil and water conservation district" or "district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (B§ 10.1-500 et seq.) of Title 10.1 of the Code of Virginia.

"Technical Review Committee" or "TRC" means a committee established by a soil and water conservation district board to review RMPs and provide recommendations to the soil and water conservation district board regarding RMPs. A TRC may include, but not be limited to, the following members: soil and water conservation district directors, associates, and personnel; Virginia Cooperative Extension personnel; department nutrient management specialists; and such other technical resources available to the district.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations for point source discharges and load allocations for nonpoint sources or natural background, or both, and must include a margin of safety and account for seasonal variations.

4VAC50-70-20

4VAC50-70-20. Purpose and authority.

Pursuant to Article 1.1 (B§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia, this chapter is adopted to clarify and specify the criteria that must be included in a resource management plan and the processes by which a Certificate of RMP Implementation is issued and maintained. Except as provided for in 4VAC50-70-30, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plans, in accordance with the criteria for such plans set out in B§ 10.1-104.8 of the Code of Virginia and any requirements of this chapter, shall be deemed to be in full compliance with any load allocation contained in a TMDL established under B§ 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and applicable state water quality requirements for nutrients and sediment.

4VAC50-70-30

4VAC50-70-30. Applicability of other laws and regulations.

Nothing in this chapter shall be construed as limiting the applicability of other laws, regulations, or permits including, but not limited to, a Virginia Pollutant Discharge Elimination System Permit, a Virginia Pollution Abatement Permit, a nutrient management plan otherwise required by law, any requirements of the Chesapeake Bay Preservation Act, and any requirements of the Agricultural Stewardship Act.

4VAC50-70-40

4VAC50-70-40. Minimum standards of a resource management plan.

A. Pursuant to Article 1.1 (B§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia, a resource management plan requires the implementation of BMPs sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local TMDL water quality requirements of the Commonwealth. Pursuant to subdivision B 5 of B§ 10.1-104.8 of the Code of Virginia, a RMP shall address all of the following BMP requirements when applicable to the management unit and needed based upon an on-farm assessment of the following land uses:

1. For all cropland or specialty crops:

a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);

b. A forest or grass buffer between cropland and perennial streams shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the edge of the field to meet water quality objectives;

c. A soil conservation plan that achieves a maximum soil loss rate to "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions; and

d. Cover crops, when needed to address nutrient management and soil loss requirements, that provide for reportable practices which meet best management practice specifications as determined by NRCS or the Virginia Agricultural Best Management Practices Cost-Share Program.

2. For all hayland:

a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);

b. A forest or grass buffer between cropland and perennial streams shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the edge of the field to meet water quality objectives; and

c. A soil conservation plan that achieves a maximum soil loss rate to "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions.

3. For all pasture:

a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);

b. A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions; and

c. A system that limits or prevents livestock access to perennial streams requires that:

(1) Any fencing or exclusion system provides year-round livestock restriction to perennial streams;

(2) A forest or grass buffer between the exclusion system and a perennial stream shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the exclusion system to meet water quality objectives; and

(3) Provisions that are made for access through stream crossings and livestock watering systems are designed to NRCS standards and specifications and are determined necessary by the RMP developer.

B. Other BMPs approved by the department may be applied to achieve the minimum standards of this section beyond those already identified by NRCS or within the Virginia Agricultural Best Management Practices Cost-Share Program.

C. The department shall evaluate the minimum standards of this section to determine their adequacy when revisions occur to a load allocation contained in a TMDL established under B§ 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and applicable state water quality requirements for nutrients and sediment. Changes to the minimum standards by the board may result in the use of BMPs identified in the Chesapeake Bay Watershed Model, identified in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, or approved by the department.

4VAC50-70-50

4VAC50-70-50. Components of a resource management plan.

A. Pursuant to subdivision B 3 of B§ 10.1-104.8 of the Code of Virginia, an assessment shall be performed by the RMP developer or by an individual authorized by the RMP developer to perform work on his behalf and shall gather and evaluate the following information:

1. Information on the location of the management unit, including geographic coordinates, United States Department of Agriculture Farm Service Agency tract number or numbers, if applicable, or the locality tax parcel identification number or numbers;

2. Description of the management unit, including acreage, water features, environmentally sensitive features, erosion issues, and agricultural activity;

3. Contact information for the owner or operator who has requested the RMP, including name, address, and telephone number;

4. Authorization from the owner or operator for the RMP developer, or his designee, for right of entry and access to property specified within the management unit and authorization to obtain copies of any conservation or water quality plans necessary for the assessment;

5. Copies of nutrient management plans, soil conservation plans from NRCS, RMPs, and any other conservation or water quality plan that includes the implementation of BMPs; and

6. Information on the location and status of all BMPs and other alternative measures applicable to the management unit that are currently implemented.

B. Following the assessment provided in subsection A of this section, the RMP developer shall prepare the RMP in a format established by the department or in a format approved by the board as equivalent that contains the following components:

1. A determination of the adequacy of existing BMPs, conservation plans, and water quality plans in meeting the minimum standards set out in 4VAC50-70-40;

2. A complete list of BMPs, developed as a result of the assessment required in subsection A of this section, that may be utilized to meet the minimum standards set out in 4VAC50-70-40;

3. A complete list of the BMPs that the owner or operator agrees to implement or maintain to meet the minimum standards set out in 4VAC50-70-40;

4. A confirmation of BMPs that achieve the minimum standards set out in 4VAC50-70-40;

5. A schedule for the implementation of the BMPs;

6. An inclusion of any current nutrient management plans, soil conservation plans, and any other conservation or water quality plans that include the implementation of BMPs; and

7. Other information collected pursuant to subsection A of this section.

C. Certification.

1. The RMP developer must certify that the RMP is true and correct in his professional judgment.

2. The RMP must be signed by the owner or operator affirming that he:

a. Is the responsible individual to be implementing the RMP in its entirety;

b. Shall adhere to the RMP;

c. Shall allow the review authority to conduct inspections of properties within the management unit as needed to ensure the adequacy of the RMP in accordance with 4VAC50-70-70;

d. Shall notify the RMP developer within 60 days of potential material changes to the management unit that may require revision of the plan pursuant to 4VAC50-70-60; and

e. Shall notify the review authority of a complete change in owner or operator of the management unit or units under the RMP. If a management unit falls within one or more soil and water conservation districts, the owner or operator shall contact the district containing the greatest land area of the management unit.

4VAC50-70-60

4VAC50-70-60. Revisions to a resource management plan.

A. Upon notification of the review authority by an owner or operator of a change in owner or operator of the management unit with a signed RMP, in accordance with 4VAC50-70-50 C 2 e, where it involves the

complete transfer of one or more RMPs and any Certificate or Certificates of RMP Implementation previously issued by the department for such RMPs:

1. The review authority shall contact the new owner or operator within 60 days of the new owner or operator assuming control of the management unit regarding implementation of the RMP and any necessary revisions.

2. Following consultation with the review authority, the new owner or operator may elect to:

a. Implement and maintain the provisions of the existing RMP. The new owner or operator must sign the RMP in accordance with 4VAC50-70-50 C. If a Certificate of RMP Implementation has been issued to the prior owner or operator, the certificate shall be transferred by the department to the new owner or operator upon notification by the review authority. The transferred certificate shall be valid for the balance of time remaining since it was originally issued by the department;

b. Contact the RMP developer when changes in the operation are planned by the new owner or operator or are otherwise required by this chapter. The new owner or operator may request the RMP developer to revise the RMP as necessary to fulfill BMP requirements pursuant to 4VAC50-70-50 and the administrative requirements of subsection D of this section; or

c. Choose not to continue implementing the RMP. If a Certificate of RMP Implementation for the management unit has been issued, it shall be revoked by the department.

B. Upon notification of the RMP developer by the owner or operator of the management unit with a signed RMP, in accordance with 4VAC50-70-50 C, that changes in the management unit or implementation of the RMP may create needs for revision, the RMP developer shall review the RMP within 30 days to determine if material changes to the management unit require a revision of the RMP in accordance with the following:

1. Material changes to the management unit that may require a revision of the RMP include:

a. A conversion from one type of agricultural operation to another;

b. A change in the schedule and type of BMPs implemented pursuant to 4VAC50-70-50;

c. An increase or decrease in production acreage that materially impacts the management unit's ability to meet the minimum standards set out in 4VAC50-70-40;

d. An increase or decrease in livestock population that materially impacts the management unit's ability to meet the minimum standards set out in 4VAC50-70-40; or

e. Any other change the RMP developer identifies that would materially impact the management unit's ability to meet the minimum standards set out in 4VAC50-70-40.

2. The RMP developer will determine if revision of the RMP is required. When the RMP developer determines that revision of the existing RMP is not necessary, the RMP developer shall provide such determination to the requesting owner or operator in writing. Such documentation shall be available upon inspection by the review authority. When the RMP developer determines that revision of the existing RMP is necessary, the owner or operator may elect to:

a. Request the RMP developer to revise the RMP as necessary to fulfill RMP requirements pursuant to 4VAC50-70-50 and the administrative requirements of subsection D of this section; or

b. Choose not to continue implementing a RMP whereupon the RMP for the management unit shall no longer be valid. The RMP developer shall notify the review authority and the department in writing of this decision by the owner or operator. If a Certificate of RMP Implementation for the management unit has been issued, it shall be revoked by the department.

C. When an owner or operator does not hold a Certificate of RMP Implementation for an RMP that has been approved by the review authority, revision of the RMP is required when a new or modified watershed implementation plan is issued for the Chesapeake Bay or a new or modified local approved TMDL is issued that assigns a load to agricultural uses. An RMP covering land with waters that drain to such TMDL shall be deemed sufficient when the RMP has been revised to address the new or modified TMDL and the owner or operator agrees to implement the revised RMP, except as provided in subsection D of this section.

D. When an owner or operator holds a Certificate of RMP Implementation that has not expired, revision of the RMP specified in subsection C of this section is not required. In this case the owner or operator may continue operation of the RMP without revision due to a new or modified watershed implementation plan for the Chesapeake Bay or a new or modified local approved TMDL for the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.

E. When an owner or operator with a revised RMP fulfills all requirements pursuant to this section and 4VAC50-70-70, and the owner or operator holds a Certificate of RMP Implementation that has not expired for the management unit addressed by the revised RMP, the owner or operator may request that the department revoke the existing Certificate of RMP Implementation and issue a new Certificate of RMP Implementation. The department shall evaluate and respond to all requests. Upon verification that all requirements have been satisfied, the department shall issue a new Certificate of RMP Implementation in a timely manner and ensure that no owner or operator is found out of compliance with any requirements of this chapter due to any delays in the department's issuance of a new Certificate of RMP Implementation pursuant to this subsection even if the original certificate expires during this issuance time period.

F. Revision of an RMP by an RMP developer requires:

1. If a Certificate of RMP Implementation has not been issued, the revised RMP shall be provided to the review authority and shall be subject to all review requirements set out in 4VAC50-70-70 and shall be subject to the requirements for issuance of a Certificate of RMP Implementation pursuant to 4VAC50-70-80.

2. If a Certificate of RMP Implementation has been issued by the department and its duration has not expired, such existing Certificate of RMP Implementation shall remain valid for the balance of time remaining since it was originally issued by the department or a new Certificate of RMP Implementation may be issued where appropriate in accordance with subsection E of this section.

3. An existing or new owner or operator shall sign a revised RMP pursuant to 4VAC50-70-50 C.

4. When a valid Certificate of RMP Implementation has been issued by the department for the management unit, the RMP developer shall provide the review authority and the department with a copy of a revised RMP within 30 days of completion of the revised plan.

4VAC50-70-70

4VAC50-70-70. Review of a resource management plan.

A. Upon completion of a new or revised RMP in accordance with 4VAC50-70-50 and 4VAC50-70-60, the owner or operator or the RMP developer on behalf of the owner or operator, shall submit the RMP to the review authority.

B. Each soil and water conservation district shall establish a Technical Review Committee (TRC). RMPs received by a soil and water conservation district shall be referred to the TRC for review to ensure the RMP fully meets the minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50. Within 90 days of receipt of the RMP, the soil and water conservation district shall notify the owner or operator and the RMP developer in writing if the RMP fulfills such requirements. An RMP that fails to fulfill such requirements shall be returned to the RMP developer noting all deficiencies. A revised RMP may be resubmitted once the noted deficiencies have been satisfactorily addressed. Revised submittals shall be reviewed and a response regarding RMP sufficiency or a listing of RMP deficiencies provided within 45 days of receipt.

C. If an RMP is located within multiple soil and water conservation districts, each TRC will review the portion of the plan applicable to the management unit within their district, either in consultation or independently of each other. The soil and water conservation district with the largest amount of acreage under the RMP has lead responsibility for (i) coordinating the review among multiple districts; (ii) resolving disputes; (iii) corresponding with the owner or operator and RMP developer regarding the RMP review; and (iv) when appropriate, submitting required documentation to the department to support issuance of a Certificate of RMP Implementation.

D. RMPs received by the department where no local soil and water conservation district exists must fully meet minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50 and shall be reviewed by the department. Within 90 days of receipt of the RMP, the department shall notify the

owner or operator and the RMP developer if the RMP fulfills such requirements. An RMP that fails to fulfill such requirements shall be returned to the RMP developer noting all deficiencies. A revised RMP may be resubmitted once the noted deficiencies have been satisfactorily addressed. Revised submittals shall be reviewed and a response regarding RMP sufficiency or a listing of RMP deficiencies provided within 45 days of receipt.

E. When an RMP is determined by the review authority to be insufficient to meet minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50, such review authority shall work with the owner or operator and the RMP developer to revise the RMP.

F. Where an RMP is deemed sufficient, the notification issued to the owner or operator and the RMP developer by the review authority shall include approval of the plan and its implementation in accordance with subsection B or D of this section, whichever is applicable.

G. When an owner or operator is aggrieved by an action of the review authority pursuant to this section, the owner or operator shall have a right to appeal in accordance with 4VAC50-70-110.

#### 4VAC50-70-80

##### 4VAC50-70-80. Issuance of a Certificate of Resource Management Plan Implementation.

A. Prior to issuance of a Certificate of RMP Implementation for a management unit, confirmation shall be made by the RMP developer that no revision of the RMP is required in accordance with 4VAC50-70-60 and as such is adequate, and verification of the full implementation of the RMP shall be completed. The owner or operator shall request the verification of RMP implementation by the review authority.

B. The request to the review authority for verification in a format provided by the department shall include the following:

1. A complete copy of the RMP including any referenced plans;

2. Authorization for review authority employees to conduct an onsite inspection of the management unit to ensure the RMP is fully implemented; and

3. Authorization upon the issuance of a Certificate of RMP Implementation for review authority employees and the department to conduct onsite inspections of the management unit to ensure the continued implementation of, maintenance of, and compliance with the RMP in accordance with 4VAC50-70-90.

C. If based on onsite verification and a review of referenced plans by the local soil and water conservation district where the district is the review authority the RMP is determined to be adequate and fully implemented in accordance with subsection A of this section, the soil and water conservation district board shall affirm such adequacy and implementation and submit the required documentation to the department for action. Upon receiving such documentation supporting that the plan is adequate and has been fully implemented, the department shall issue a Certificate of RMP Implementation.

D. Where the department is the review authority, the department shall determine adequacy and full implementation of the RMP in accordance with subsection A of this section through onsite verification and a review of referenced plans. If based on the onsite verification and a review of referenced plans, the RMP is determined to be adequate and fully implemented, the department shall affirm such implementation by issuing a Certificate of RMP Implementation.

E. If the resource management plan is not adequate or has not been fully implemented, the review authority shall provide the owner or operator with written documentation that specifies the deficiencies of the RMP within 30 days following the field review of the RMP. The owner or operator may correct the named deficiencies and request verification of RMP adequacy or implementation at such time as the shortcomings have been addressed.

F. A Certificate of RMP Implementation shall be valid for a period of nine years.

G. An owner or operator who holds a Certificate of RMP Implementation that has not expired shall not be required to revise the RMP when the issuance of a new or modified watershed implementation plan for the Chesapeake Bay TMDL or a new or modified local approved TMDL impacts any portion of the management

unit during the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.

H. Upon the expiration of the Certificate of RMP Implementation, a new RMP may be prepared by a plan developer for the management unit upon request by the owner or operator. The RMP must conform with all existing TMDL implementation plans applicable to the management unit to include the Chesapeake Bay and any local approved TMDL, which assign a load to agricultural uses and impact any portion of the management unit. The plan developer shall ensure the new RMP complies with requirements set forth in 4VAC50-70-40.

I. The department shall maintain a public registry on the agency's website of all current Certificates of RMP Implementation in accordance with the provisions of subsection E of B§ 10.1-104.7 of the Code of Virginia.

4VAC50-70-90

4VAC50-70-90. Inspections.

A. Each management unit that has been issued a Certificate of RMP Implementation shall be subject to periodic onsite inspections to be performed by the review authority. In addition the department, when it is not the review authority but deems it appropriate, can conduct inspections to ensure the continued implementation of, maintenance of, and compliance with the RMP.

B. Onsite inspections shall occur no less than once every three years but not more than annually on lands where an active Certificate of RMP Implementation has been issued provided that no deficiencies have been noted pursuant to this section that may require more frequent inspections or re-inspections.

C. As part of an inspection, an owner or operator shall provide any documents needed to verify the implementation of the RMP, any documents pertaining to revision of the RMP when applicable, and any other referenced plans as applicable.

D. Upon the completion of the inspection, an inspection report shall be completed in a format provided by the department to document the implementation of the RMP on the management unit. A copy of the inspection report shall be provided to the department within 10 business days following the date of inspection with a copy to the owner or operator when inspections are performed by a soil and water conservation district. The inspection report shall include:

1. Confirmation of all BMPs implemented, operated, and maintained with a notation of changes in the operation of any BMPs included in the RMP; and

2. Any identified deficiencies that may include any components of the RMP that have not been satisfactorily implemented, components that need to be renewed, and any changes to the management unit that may need to be addressed through revision of the RMP.

E. If deficiencies are noted based upon the inspection, the department shall proceed pursuant to 4VAC50-70-100.

F. All inspections or re-inspections conducted in accordance with this chapter shall occur only after 48 hours of prior notice to the owner or operator unless otherwise authorized by the owner or operator.

4VAC50-70-100

4VAC50-70-100. Compliance.

A. If deficiencies are identified during an inspection conducted in accordance with 4VAC50-70-90, following review of such deficiencies the department shall provide a written notice to the owner or operator within 30 days of receipt of the inspection report. The written notice shall include a list of the noted deficiencies that need to be addressed to meet full implementation of the RMP.

B. Within 90 days of the written notice being issued to the owner or operator, a corrective action agreement in a format provided by the department, that may include revisions to the RMP, shall be developed by the RMP developer in consultation with the owner or operator, signed by the owner or operator, and submitted to the department for consideration. The corrective action agreement shall include an implementation schedule to correct the deficiencies found during the inspection. The department shall review the corrective action agreement including any revisions to the RMP within 30 days following receipt. The department shall consult



with the review authority. If the corrective action agreement, including any revisions to the RMP, is determined by the department to be reasonable and satisfactory, the department shall convey such determination to the owner or operator in writing within 30 days following receipt.

C. If the department determines that the corrective action agreement, including any revisions to the RMP, does not satisfactorily address deficiencies documented from an inspection conducted pursuant to 4VAC50-70-90, the department shall document such deficiencies in writing to the owner or operator within 30 days following receipt of the corrective action agreement. A revised corrective action agreement may be submitted once the noted deficiencies have been satisfactorily addressed.

D. If the department and the owner or operator are unable to concur on a final corrective action agreement within 90 days of the submission of the initial corrective action agreement to the department or such additional time that is acceptable to the department, the department shall revoke the owner's or operator's Certificate of RMP Implementation after an informal fact finding proceeding held in accordance with B§ 2.2-4019 of the Code of Virginia.

E. If it is determined by the department through a re-inspection that an owner or operator has failed to fully implement the agreed upon corrective action agreement, the department shall revoke the owner's or operator's Certificate of RMP Implementation for the corrective action agreement. Such re-inspection shall be performed by the department or by the review authority when directed by the department.

F. At any time, the owner or operator may provide written notice to the department requesting that the Certificate of RMP Implementation be revoked.

Statutory Authority

4VAC50-70-110

4VAC50-70-110. Appeals.

A. An owner or operator that has been aggrieved by any action of a soil and water conservation district shall have a right to appeal to the department within 30 days of issuance of the district's decision. The department shall make its decision on an appeal in accordance with the Administrative Process Act (B§ 2.2-4000 et seq. of the Code of Virginia). In making its decision on an appeal, the department will hold an informal fact finding proceeding in accordance with B§ 2.2-4019 of the Code of Virginia.

B. Any party, including but not limited to a district, an owner or operator, or a RMP developer aggrieved by and claiming the unlawfulness of a case decision of the department shall have a right to appeal to the board in accordance with the Administrative Process Act (B§ 2.2-4000 et seq. of the Code of Virginia). In making its decision on an appeal, the board will hold an informal fact finding proceeding in accordance with B§ 2.2-4019 of the Code of Virginia.

C. Any party, including but not limited to a district, an owner or operator, or a RMP developer, aggrieved by and claiming the unlawfulness of a case decision of the board shall have a right to appeal to a court of competent jurisdiction in accordance with the Administrative Process Act (B§ 2.2-4000 et seq. of the Code of Virginia).

D. Revocation of a Certificate of RMP Implementation issued pursuant to 4VAC50-70-80 shall be suspended pending any appeals.

4VAC50-70-120

4VAC50-70-120. Reporting.

A. BMP data collection and reporting shall occur:

1. When a RMP assessment is conducted by a soil and water conservation district or when data is made available to a district by an owner or operator following an assessment performed by a RMP developer or individual authorized by them to perform an assessment pursuant to 4VAC50-70-50;

2. Upon changes or revisions to a RMP pursuant to 4VAC50-70-60;

3. Upon verification of the full implementation of the RMP as required by 4VAC50-70-80;

4. When inspections are conducted pursuant to 4VAC50-70-90; and

5. Upon any other opportunities when verification of BMP implementation becomes available.

B. BMP data collected in accordance with subsection A of this section shall be entered in the Virginia Agricultural BMP Tracking Program or any subsequent automated tracking systems made available to soil and water conservation districts by the department.

C. BMP data entry by soil and water conservation districts shall occur throughout the year; however, the annual reporting period shall begin July 1 of one year and end June 30 of the following year. Districts shall ensure all collected data is fully entered in the data collection system by July 31 following the close of the annual reporting period.

D. Any personal or proprietary information collected pursuant to Article 1.1 (B§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia shall be exempt from the Virginia Freedom of Information Act (B§ 2.2-3700 et seq. of the Code of Virginia) and fully comply with all provisions of B§ 10.1-104.7 of the Code of Virginia.

E. The department, in accordance with subsection D of this section, shall make use of RMP BMP data for purposes that include progress reporting for the Chesapeake Bay TMDL watershed implementation plan; other local approved TMDLs; inclusion in the report required by B§ 2.2-220 of the Code of Virginia; and other reports required of the department or generated by the agency.

4VAC50-70-130

4VAC50-70-130. Review of duties performed by soil and water conservation districts.

A. The department shall periodically conduct a comprehensive review of the RMP duties performed by each soil and water conservation district to evaluate whether requirements set forth by this chapter have been satisfactorily fulfilled. The department shall develop a schedule for conducting periodic reviews and evaluations. Each district shall receive a comprehensive review at least once every five years; however, the department may impose more frequent, partial, or comprehensive reviews with cause. Such reviews where applicable shall be coordinated with those being implemented by agency staff for other purposes that may include annual spot checks of BMPs implemented by districts through the Virginia Agricultural BMP Cost Share Program.

B. If a review conducted by the department indicates that the soil and water conservation district has not administered, enforced where authorized to do so, or conducted its duties in a manner that satisfies the requirements set forth within this chapter, the department shall document such deficiencies and convey the needed corrective actions in writing to the soil and water conservation district's board of directors within 30 days following the review.

C. When the department determines:

1. The deficiencies are due to the district's failure to satisfactorily perform the required duties with the resources at its disposal, the department shall provide close oversight, guidance, and training as appropriate to enable the district to fully perform the duties required by this chapter. If after such actions there remains one or more deficiencies that cannot be resolved to the satisfaction of the department, the department may delay or withhold funding under its authority and control from the district that is not satisfactorily performing its RMP duties. Such duties may be assigned to another soil and water conservation district. Funds withheld from the district with deficiencies may be directed to the district that is performing the additional RMP duties.

2. The deficiencies are due to a work demand generated by the duties required by this chapter that exceed the district's existing resources, the department shall endeavor to assist the district in the performance of its duties and in finding a solution to the shortage of resources.

4VAC50-70-140

4VAC50-70-140. RMP developer qualifications and certification.

A. An individual shall be qualified to serve as an RMP developer if the individual:

1. Is certified as a conservation planner by the NRCS and is certified as a nutrient management planner by the department; or

2. Is certified as a nutrient management planner by the department and demonstrates academic and applied proficiencies with and an understanding of all of the following:

a. Agricultural conservation planning;

b. State and federal environmental laws and regulations and local ordinances;

c. State and federal laws and regulations that address the identification and preservation of historic resources;

d. Standards and specifications for agricultural conservation practices utilized in Virginia and the ability to plan and implement such practices;

e. Soil erosion processes and skill in applying approved erosion prediction technologies including the applicable current United States Department of Agriculture Revised Universal Soil Loss Equation and the Wind Erosion Equation;

f. The fundamentals of water quality and nonpoint source pollution, pest management, and fire management;

g. Site vulnerability assessment tools; and

h. Other proficiencies and understandings identified by the department in consultation with the board.

B. In a format established by the department, such individual shall submit documentation to the department for verification that the requirements of subsection A of this section have been met.

1. Upon receipt, the department shall review the documentation and issue its notification within 60 days. During its review the department shall determine:

a. If all required documentation is complete. If incomplete the applicant shall be notified.

b. If all requirements have been satisfied. If deficiencies exist the applicant shall be notified.

2. Applicants with deficiencies may submit additional documentation in support of their request to be certified. The department shall review the documentation provided within 30 days to determine its sufficiency.

3. When all requirements of this subsection have been met, the department shall issue to the applicant a Resource Management Plan Developer Certificate.

C. In the event that an individual's proficiency skills or the quality of technical work no longer meet the criteria for RMP developer certification, the individual's certification may be revoked by the department following a seven-day advance notification of the pending action and the holding of an informal fact finding proceeding held in accordance with B§ 2.2-4019 of the Code of Virginia. The department shall consider any action by NRCS to decertify a certified conservation planner. An RMP developer may appeal a decision of the department to the board in accordance with 4VAC50-70-110.

D. When an individual's RMP developer certificate has been revoked by the department, the basis for the revocation will be provided to the individual by the department. The individual will be informed of the steps necessary to address the deficiencies that led to the revocation and to re-establish certification.

E. Revocation of an individual's RMP developer certificate shall not result in revocation of a Certificate of RMP Implementation of which the RMP developer was party to.

F. The department shall maintain a public registry on the agency's website of all individuals issued a RMP developer certificate and shall note any subsequent revocations or other changes to the status of RMP developers.

4VAC50-70-150

4VAC50-70-150. Advancing the adoption of RMPs.

The department and districts shall encourage and promote the adoption of RMPs among agricultural communities across the Commonwealth.

